
Emergency Rules

Title 2—DEPARTMENT OF AGRICULTURE Division 110—Office of the Director Chapter 2—Missouri Qualified Biodiesel Producer Incentive Program

EMERGENCY RULE

2 CSR 110-2.010 Description of General Organization; Definitions; Requirements of Eligibility, Licensing, Application for Grants; Procedures for Grant Disbursements; Record Keeping Requirements, and Verification Procedures for the Missouri Qualified Biodiesel Producer Incentive Program

PURPOSE: This rule describes the operation of the program; defines terms; establishes requirements for eligibility, licensing, and application for grants; describes procedures for grant disbursement; and establishes record keeping requirements and verification procedures.

EMERGENCY STATEMENT: This emergency rule allows the Department of Agriculture to implement the Missouri Qualified Biodiesel Producer Incentive Program. Recent statutory changes have made this program ready to be utilized by Missouri biodiesel producers. Since these biodiesel producers are ready to begin production and help meet the motor fuel needs of the state and the nation, the Department of Agriculture finds a compelling governmental interest for these rules. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Agriculture believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed July 20, 2006, effective August 28, 2006, and expires February 23, 2007.

(1) General Organization.

(A) The director of the Department of Agriculture is authorized to administer the Missouri Qualified Biodiesel Producer Incentive Fund and, subject to appropriations for this purpose, shall provide economic subsidies to Missouri qualified biodiesel producers (MQBP). To obtain a grant from the fund, an MQBP must be eligible, licensed, must submit a formal grant application, and conform to the requirements of this rule in all other ways.

(B) All submissions or requests for information regarding the Missouri Qualified Biodiesel Producer Incentive Fund should be directed to the Missouri Department of Agriculture, Qualified Biodiesel Producer Incentive Fund, PO Box 630, Jefferson City, MO 65102.

(2) Definitions.

(A) Actively engaged in agricultural production for commercial purposes—A person, partnership, corporation, trust, or limited liability company whose main purpose is agricultural production and who:

1. Bears the risk of production for agricultural products;
 2. Bears the risk of price change with respect to production; and
 3. Has a level of involvement in management sufficient to establish material participation.
4. Generally, a person who receives a fixed rental or other fixed compensation (without reference to production) is NOT actively engaged in agricultural production for commercial purposes.

(B) Biodiesel—Fuel that meets the American Society for Testing and Materials (ASTM) Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels.

(C) Department—The Missouri Department of Agriculture.

(D) Director—The director of the Missouri Department of Agriculture.

(E) Feedstock—An agricultural, horticultural, viticultural, or vegetable product, grapes grown to be processed into wine, bees, honey, fish or other aquacultural product, planting seed, livestock or a livestock product, a forestry product, poultry or a poultry product, either in its natural form or processed form, that has been produced, processed, or otherwise had value added to it in this state;

(F) Material participation—An agricultural producer shall materially participate only if the producer is involved in the agricultural production operation on a basis which is regular, continuous, and substantial.

(G) Missouri qualified biodiesel producer (MQBP)—A facility located in Missouri that produces biodiesel and is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, where:

1. One hundred percent (100%) of the feedstock used by the facility originates in the United States; and
2. At least eighty percent (80%) of the feedstock used by the facility originates in the state of Missouri, or the facility is at least fifty-one percent (51%) owned by agricultural producers who are residents of Missouri and who are actively engaged in agricultural production for commercial purposes.

(H) Qualified biodiesel—Biodiesel produced by an MQBP.

(3) Criteria for Classification as a Missouri Qualified Biodiesel Producer. To be classified as an MQBP by the department a biodiesel production facility must:

- (A) Be located in Missouri;
- (B) Be registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79;
- (C) Have at least fifty-one percent (51%) of the owners be residents of Missouri who are actively engaged in agricultural production for commercial purposes, or at least eighty percent (80%) of the feedstock used by the facility must originate in the state of Missouri;
- (D) Use only feedstock that originates in the United States;
- (E) Be licensed by the department to produce biodiesel;
- (F) Make formal application for monthly grants from the Missouri Qualified Biodiesel Producer Incentive Fund; and
- (G) Conform to all other requirements of this rule.

(4) Procedures for Obtaining a Missouri Qualified Biodiesel Producer License.

(A) Application for a Missouri Qualified Biodiesel Producer license must be made on the form provided by the department. Such forms can be obtained by requesting them from the Missouri Department of Agriculture, Qualified Biodiesel Producer Incentive Fund, PO Box 630, Jefferson City, MO 65102.

(B) The license application must include:

1. The biodiesel producer's registration number from the United States Environmental Protection Agency according to the requirements of 40 CFR 79;
2. The biodiesel producer's federal employer identification number or Social Security number;
3. If incorporated, a copy of the biodiesel producer's Certificate of Good Standing issued by the Missouri Secretary of State;
4. Complete name and address of the biodiesel producer's owner, or, if a partnership, the names and addresses of the partners, or, if a corporation, the names and addresses of the principal officers;
5. Certification by the biodiesel producer's board of directors that:

A. One hundred percent (100%) of the feedstock to be used by the facility will originate in the United States; and

B. At least eighty percent (80%) of the feedstock to be used by the facility will originate in the state of Missouri, or the facility is at least fifty-one percent (51%) owned by agricultural producers who are residents of Missouri and who are actively engaged in agricultural production for commercial purposes;

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6. Diagram of the premises (location of the production plant, etc.);

7. Description of the production facilities, including the plant's capacity;

8. Description of the laboratory analyses protocol that will be followed to ensure the biodiesel conforms to ASTM Standard D-6751 specifications;

9. The amount and source (i.e., name, address, phone number) of the feedstocks to be used annually by the facility;

10. The maximum number of gallons of biodiesel to be produced annually by the facility; and

11. The amount and source of funds invested in the facility.

(C) The department will strive to act upon all original license applications within ninety (90) days of receipt.

(D) The original license shall be issued effective from the date all required information has been received and approved by the department and shall expire when the MQBP has received sixty (60) months of grants or no longer complies with the provisions of section 142.031, RSMo and this rule.

(5) Grant Application Procedures.

(A) An MQBP may apply for a producer incentive grant by requesting a monthly grant application form from the Missouri Department of Agriculture, Qualified Biodiesel Producer Incentive Fund, PO Box 630, Jefferson City, MO 65102.

(B) To obtain a producer incentive grant for a particular month, an MQBP must complete the prescribed grant application form.

(C) The MQBP must submit the completed grant application form to the department no later than fifteen (15) days following the last day of the month for which the grant is sought. Any information or documents submitted by an MQBP to the department will be considered received by the department on the—

1. Postmark date for items delivered by the United States Postal Service;

2. Actual date received by the department for items delivered by any other carrier service; or

3. Actual date received for information received by facsimile or e-mail within the department's Jefferson City, Missouri central office.

(D) The grant application must include the:

1. Complete name and address of the owner, or the complete names and addresses of the partners if the MQBP is a partnership, or the complete names and addresses of the principal officers if the MQBP is a corporation;

2. Address and location of all biodiesel plants owned by the MQBP. Each MQBP must include all Missouri plants as well as plants outside Missouri;

3. Production capacity of each biodiesel plant;

4. Estimated number of employees needed to reach the production capacity of each biodiesel plant;

5. Estimated production in the July 1–June 30 time period at each biodiesel plant;

6. Total number of employees and the number of Missouri citizens employed by the MQBP during the preceding month;

7. Number of bushel equivalents of Missouri agricultural products used by the MQBP in the production of biodiesel during the preceding month;

8. Gallons of biodiesel produced during the month for which the grant is applied;

9. Gallons of biodiesel produced from Missouri feedstock during the month for which the grant is applied;

10. Quantity of all feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

11. Quantity and source (i.e., name, address, phone number) of Missouri-produced feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

12. Quantity and source (i.e., name, address, phone number) of United States-produced feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

13. If the feedstock used by the MQBP was purchased from an out-of-state source, the out-of-state source must provide certification of:

A. The quantity of Missouri agricultural products purchased to produce the biodiesel feedstock; and

B. The volume of feedstock produced from Missouri agricultural products;

14. Total amount of biodiesel produced by the MQBP during the current fiscal year (July 1 through June 30); and

15. A copy of the most recent laboratory analyses verifying that the biodiesel conforms to ASTM Standard D-6751 specifications.

(6) Grant Disbursement Procedures.

(A) Each fiscal year the department shall make available to MQBPs all monies appropriated to the "Missouri Qualified Biodiesel Producer Incentive Fund" by the general assembly and signed into law by the governor, less any governor's reserve and/or withholding.

(B) A MQBP shall be eligible for a monthly grant from the Missouri Qualified Biodiesel Producer Incentive Fund, except that an MQBP shall only be eligible for the grant for a total of sixty (60) months.

(C) The amount of each monthly grant is calculated by first determining the number of gallons of qualified biodiesel produced from Missouri agricultural products in the preceding month of the fiscal year, as certified by the department. That number is then multiplied by the per gallon credit established in section 142.031, RSMo and this rule. Each MQBP shall be eligible for a total grant in any fiscal year equal to thirty cents (30¢) per gallon for the first fifteen (15) million gallons of qualified biodiesel produced from Missouri agricultural products in the fiscal year, plus ten cents (10¢) per gallon for the next fifteen (15) million gallons of qualified biodiesel produced from Missouri agricultural products in the fiscal year. All such qualified biodiesel produced by an MQBP in excess of thirty (30) million gallons in a fiscal year shall not be applied to the computation of a grant.

(D) If available monies are insufficient to pay all MQBPs the maximum monthly grant allowed by law, available monies will be apportioned so that each MQBP receives a share of monies proportionate to the eligible biodiesel production of all MQBPs for that month.

(E) The department will strive to pay all grants for a particular month within thirty (30) days of receipt and approval of the grant application form.

(7) Record Keeping Requirements and Verification Procedures.

(A) Each MQBP shall keep accurate purchase and production records and source documents for at least three (3) years. The records and source documents must be sufficient to verify the—

1. Actual monthly production, inventory, and disposition of biodiesel for each Missouri biodiesel plant;

2. Actual monthly quantities of Missouri agricultural products purchased and used to produce biodiesel at each Missouri biodiesel plant;

3. Name, address, zip code, phone number of and quantity purchased from every source of purchased Missouri agricultural products used to produce biodiesel.

4. Laboratory analyses conducted to ensure the biodiesel complies with ASTM Standard D-6751 specifications;

(B) The department is authorized to examine records, documents, books, premises, and products of the MQBP to determine the validity of all information and reports submitted by the MQBP.

(C) The department is authorized to examine any other information it deems necessary to ensure that grants shall be made only to Missouri qualified biodiesel producers.

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*AUTHORITY: section 142.031, RSMo Supp. 2005. Emergency rule filed July 20, 2006, effective Aug. 28, 2006, expires Feb. 23, 2007. An emergency and proposed rule covering this same material will be published in the September 1, 2006 issue of the **Missouri Register**.*